

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 277 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MER KARA NAUGHAN PARMAR

Versus

STATE OF GUJART

Appearance:

MR PP GHANSHANI FOR NANAVATY ADVOCATES for Petitioner
MR KG SHETH, Learned APP for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2, 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 25/09/2000

C.A.V.JUDGEMENT

1. The petitioner has preferred this petition under

Articles 16, 21, 226 and 227 of the Constitution of India challenging the order of externment passed by the Sub Divisional Magistrate, Porbandar 29.11.1999 in Externment Case No. 134 of 1998 and confirmed in Appeal before the first respondent on 29.2.2000 under Section 60 of the Bombay Police Act (for short "the said Act").

2. The facts may be briefly stated as follows :

The petitioner was served with show cause notice under Section 59 of the said Act on 14.7.1998 in Externment Case No. 134 of 1998. There it was mentioned that there was a proposal for externment of the petitioner on following consideration :

- (i) That the petitioner is a head strong person.
- (ii) That the petitioner belongs to a gang of Bhura Munja which gang is involved in so many offences of murder, robbery and offences against the property.
- (iii) That the petitioner used to carry deadly weapons to deter the people at large.

That because of the aforesaid activities of the gang of the petitioner, people have been terrorized and ordinary people feeling unsecured in day to day affairs. It has further been alleged that the petitioner was involved in so many offences indicated in the notice. On the aforesaid consideration, it was stated that there was a proposal for the externment of the petitioner for a period of 2 years from the area indicated in the said notice. The notice was served upon the petitioner and proceedings were undertaken and after the conclusion of the proceedings, learned Sub Divisional Magistrate, Porbandar found that the petitioner was such a person who was required to be externed out of the limits of the area indicated in the said order for a period of 2 years from the date of the order. That order was passed on 29.11.1999.

The petitioner had preferred appeal under Section 60 of the said Act which was also dismissed on 29.2.2000. Feeling aggrieved by the said judgements and order of two authorities, the petitioner has preferred this petition before this court.

3. It has been mainly contended here that the witnesses examined by the petitioner in his defence, have

not been considered and notice contained vague and general allegations and, therefore, orders passed by the aforesaid two authorities are required to be quashed and set aside.

4. On receiving the petition, rule was issued and Mr. K.G.Sheth, learned APP appears for the State. I have heard learned advocates for the parties and have perused the papers.

5. It has first been contended that the petitioner has examined two witnesses in his defence and the aforesaid two authorities have not considered the evidence of those witnesses. Mr. K.G.Sheth, learned APP states that the evidence of those two witnesses have been considered by the authorities and, therefore, the petitioner does not get defence on that ground. In support of the said argument, Mr. Sheth, learned APP has referred to the observation at page-25 which shows that the petitioner has examined Jayesh Prabhudas and Nebha Haja Parmar. The material part of evidence has been stated at page -25 of the said order. However, on going through the said order of the learned Sub Divisional Magistrate, Porbandar, Mr. Sheth, learned APP could not put his finger at any place in the order to show that the evidence was considered and it was rejected for reasons which could be recorded in the order. Mere reference to the evidence of the witnesses is not sufficient. The evidence was required to be weighed. It could be accepted and could be rejected, but for either of the two ground were required to be recorded. Here the evidence has not been considered; has not been accepted and has not been rejected. There is no mention as to whether the learned Sub Divisional Magistrate, Porbandar applied his mind on the evidence of those witnesses. There was no evidence to show that the petitioner was a head strong person. It is neither accepted nor rejected. That shows that the evidence has not been weighed at all and that amount to non-application of mind to the material placed before the learned Sub Divisional Magistrate, Porbandar.

6. Another aspect of the case is that the grounds in the notice are vague. There is no mention as to the period during which the aforesaid activities were carried out by the petitioner. It is not stated as to the area in which the aforesaid activities were carried out by the petitioner. Dates, time and place are not there. Therefore, the allegations could not be stated to be well founded inasmuch as they are lacking on material aspect of date, time and place occurrence of the said events indicated in the said notice. Therefore, the notice has

to be treated to be vague inasmuch as it contains allegations of general nature. So on the one hand, impugned orders suffer from the aforesaid illegality inasmuch as the defence witnesses have not been considered. On the other hand, ground stated in the notice are vague and are of general nature.

7. On this aspect, it would be worthwhile to refer to a decision of this Court (Coram : D.C.Srivastava,J.) in the case of Hussainmiya @ Jago Razakmiya Qadri Vs. State of Gujarat & Ors. reported in 1999(2)GLH 786, wherein, it has been observed as under :

"An order for externment has the necessary consequence of restricting the movement of a citizen. This restriction can be imposed only by proceeding in accordance with law. The law on the subject is that prior to the passing of an order of externment show cause notice should be issued disclosing specific grounds on which an order for externment is proposed to be passed. If vague grounds are given in the show cause notice, it will certainly prejudice the petitioner in effectively raising his defence. The next stage is that if, after the receipt of the show cause notice, the cause is shown and the defence is tendered by the proposed externnee, the same is bound to be considered objectively by the externing authority as well as by the Appellate Authority. No doubt, these authorities are not exercising functions of judicial authorities while passing these orders but they are certainly acting as quasi-judicial authorities, rather objectivity should be reflected in these orders. In case evidence is adduced by the two sides it should be objectively considered and reasons should be given why evidence of one side is believed and the evidence of the other side is not believed. If the orders are passed after complying with these formalities, then certainly it can be said that procedural safeguard were observed by two authorities. In all events, violation of these safeguards will certainly render the impugned orders invalid."

8. Considering the aforesaid observations of this court in the aforesaid case, the said observations will directly apply to the facts of the case before us. Initially when the grounds stated in the notice are vague and entire object of issue of notice under Section 59 of the said Act would be frustrated. On the other hand,

when the witnesses have been examined evidence has not been considered this way or that way, then also the orders suffer from non application of mind.

9. In the aforesaid view of the matter, on this consideration this petition is allowed. The orders passed by the learned Sub Divisional Magistrate, Porbandar in Externment Case No. 134 of 1998 on 29.11.1999 and confirmed in Appeal on 29.9.2000 by the first respondent are hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(D.P.Buch, J)

(vipul)